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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-129749-08

Date:

December 22, 2008

Legend:

X =

State =

D1 =

D2 =

Y =

Dear :

This responds to the letter dated June 25, 2008, and related correspondence, submitted on behalf of X and Y, requesting relief under § 301.9100-3 of the Procedure and Administration Regulations to file late elections to treat X as an association taxable as a corporation and Y as a qualified subchapter S subsidiary (QSub), and requesting relief under § 1362(b)(5) of the Internal Revenue Code (Code) to file a late election to treat X as a subchapter S corporation.

FACTS

The information submitted states that X was formed as a single-member limited liability company under the laws of State on D1. Prior to D2, X was treated as a disregarded entity for federal tax purposes. On D2, X acquired Y, an S corporation. As part of the acquisition, the sole shareholder of Y became a member of X. As a result, on D2, X had more than one member. X became a partnership for federal tax purposes and, therefore, an ineligible shareholder of Y. Consequently, Y's S election terminated on D2.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes. Elections are necessary only when an eligible entity does not want to be classified under the default classification or when an eligible entity chooses to change its classification.

Section 301.7701-3(b)(2)(i) provides that, except for certain existing entities described in § 301.7701-3(b)(3), unless a domestic eligible entity elects otherwise, the entity is disregarded as an entity separate from its owner, if it has a single owner.

Section 301.7701-3(c)(1)(i) provides that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the appropriate service center. Under § 301.7701-3(c)(1)(iii), this election will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified. The date specified on Form 8832 cannot be more than 75 days prior to the date on which the election is filed.

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1)(B) provides that a small business corporation cannot have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(b)(3)(A) provides that, a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), in which 100 percent of the stock

of such corporation is held by the S corporation, and the S corporation elects to treat such corporation as a QSub.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that a QSub election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the form cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing. A taxpayer makes a QSub election with respect to a subsidiary by filing Form 8869, Qualified Subchapter S Election, with the appropriate service center.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such an election as timely made for such taxable year and effective as of the first day of that tax year.

Section 1362(d)(2)(A) provides that an election under §1362(a) shall be terminated whenever (at any time on or after the first day of the taxable year for which the corporation is an S corporation) the corporation ceases to be a small business corporation.

CONCLUSION

Based solely upon the representations made and the information submitted, we conclude that Y's S election terminated on D2.

We also conclude that the requirements of § 301.9100-3 are satisfied. As a result, X is granted an extension of 60 days from the date of this letter to make a corporate classification election effective D2 by filing a properly completed Form 8832, with a copy of this letter attached, with the appropriate service center. X is also granted an extension of time of 60 days from the date of this letter to elect to treat Y as a QSub effective D2 by filing a properly completed Form 8869 with the appropriate service center. A copy of this letter should be attached to each election.

We further conclude that X will be recognized as an S corporation effective D2, provided that X otherwise qualifies to be an S corporation and X's S election has not otherwise terminated under § 1362(d). In addition, we conclude that Y will be recognized as a QSub effective D2, provided that the Y's QSub election was otherwise valid and has not otherwise terminated. Therefore, within 60 days from the date of this letter, X must submit a properly completed Form 2553, Small Business Corporation Election, effective D2, with a copy of this letter attached, to the appropriate service center.

This ruling is contingent upon X and all its shareholders treating X as an S corporation and Y as a QSub for the period beginning D2, and thereafter. Therefore, within 60 days from the date of this letter, X and its shareholders must file amended returns, as appropriate, with the consistent treatment of X as an S corporation and Y as a QSub effective D2.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter ruling will be sent to your authorized representative.

Sincerely,

Curt G. Wilson

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: